



ATT update

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After the first UN Diplomatic Conference on the Arms Trade Treaty (ATT) in July 2012 failed to produce consensus around the draft Treaty text presented by the President of the Conference, Ambassador Roberto García Moritán of Argentina, the UN General Assembly (UNGA) agreed by resolution in December 2012 to hold a final Diplomatic Conference from 18 to 28 March 2013 (DipCon2).

The December 2012 resolution established that the 26 July 2012 draft Treaty text would form the basis for negotiation at DipCon2 and that the same consensus rule would apply. It nevertheless provided that should the Conference fail to deliver an ATT, the draft Treaty could be returned to the UNGA during the same session which would allow it to be adopted on the basis of a majority vote.

ADOPTION OF THE ARMS TRADE TREATY

In March, with only nine days to reach an agreement, States swiftly got down to business under the presidency of Ambassador Peter Woolcott of Australia. The various issues raised by the 26 July text and two subsequent drafts produced by Ambassador Woolcott were addressed in the plenary sessions and also in facilitated informal discussions which were open only to government delegates. However, despite the intensive negotiations, consensus on the final Treaty text was blocked by Iran, North Korea, and Syria, who disregarded the support of the overwhelming majority of States.

As a consequence, and in line with the UNGA rules of procedure, a further resolution proposing the adoption of the ATT was brought before the General Assembly. There it was adopted by a large majority on 2 April 2013, with 155 States voting in favour, 3 States voting against, and 22 abstaining.



Day of the ATT vote at the United Nations General Assembly Hall, April 2013. © PARAMITA NATH/CONTROL ARMS

OPENING FOR SIGNATURE AND RATIFICATION

On 3 June 2013, the ATT opened for signature at the UN and was signed by 67 States. This number rose to over 100 when a new wave of States signed the Treaty at an official signing ceremony held at the UNGA on 25 September.

On 11 October, the UN First Committee adopted a draft resolution welcoming the adoption of the Arms Trade Treaty on 2 April 2013. It calls upon all States that have not done so to sign and ratify the Treaty, and for States in a position to do so to provide legal or legislative assistance, institutional capacity building, and technical, material, or financial assistance. On 5 December, this resolution was adopted by the UNGA with a vote of 152 for, 0 against, and 29 abstentions. This means that none of the countries that blocked the Treaty voted against it.

At the time of writing, the Treaty has been ratified by 9 States (Iceland, Guyana, Antigua and Barbuda, Nigeria, Costa Rica,

Mexico, Trinidad and Tobago, Grenada, and Mali) and signed by 115. The Treaty will become international law 90 days after 50 countries have ratified it.

NEXT STEPS

The adoption of the Treaty is a historic achievement which has the potential to reduce human suffering by improving the regulation of the global conventional arms trade. However, the ATT's efficacy will above all depend on the willingness and ability of States to progressively implement it.

Indeed, although the Treaty text is a positive point of departure, it presents some ambiguities that States should aim to address at the implementation stage. Notably, after entry-into-force, States Parties should promote a common and progressive understanding of the ATT's provisions and encourage each State to:

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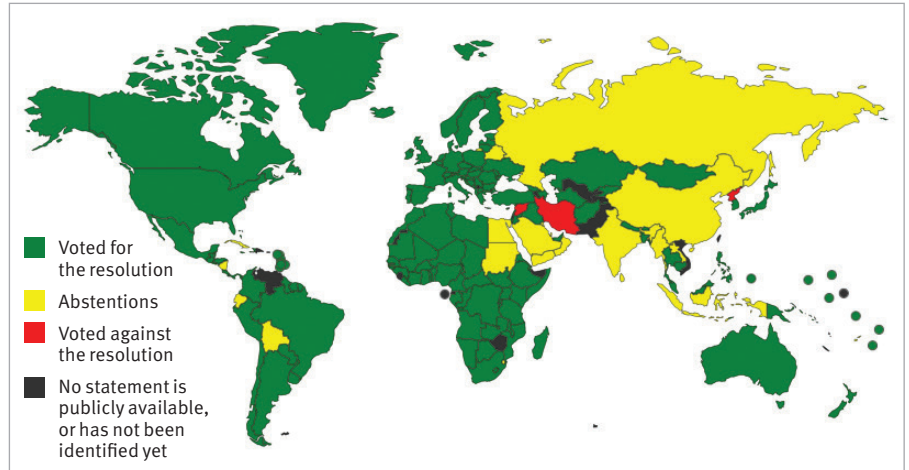


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- Publicly adopt a comprehensive national control regime, including a list of controlled items, and apply all of the Treaty's provisions to all conventional arms, ammunition and munitions, parts and components and related technologies;
- Apply the Treaty to all types of international transfers of conventional arms, including loans, gifts, and leases;
- Prohibit the transfer of all controlled items where the State has knowledge that the arms or items would facilitate violations of obligations under the UN Charter, or international human rights or humanitarian law, including customary international law;
- Carry out careful and systematic risk assessments before authorising any transfer;
- Refuse to transfer conventional arms where there is a substantial risk that they would be used to commit serious violations of international human rights and humanitarian law or undermine peace and security, including to commit serious acts of gender-based violence or serious acts of violence against women and children;
- Refuse to transfer conventional arms where there is a substantial risk that they would be diverted to unauthorised end-users or for unauthorised end-use;
- Ensure the timely exchange of relevant information and cooperate with other States Parties in the implementation of the Treaty;
- Submit to the ATT Secretariat and make public comprehensive national reports on Treaty implementation including on transfers of conventional arms.

In addition, to ensure the Treaty's swift entry-into-force and universality, States with strong arms export controls need to support States that require assistance in ratifying and fully implementing the ATT, ensuring as a result that it will have a real impact on the ground in regions affected by the proliferation and misuse of conventional arms.

This issue of the ATT Update includes one article contributed by Professor Ouyang Liping from China Institute of Contemporary International Relations and another by He Yun, a PhD candidate



armstreaty.org map of vote on the UN Resolution to adopt the Arms Trade Treaty on 2 April 2013.

at Tsinghua University. Professor Ouyang lays out the reasons for being optimistic about China's potential signature and ratification of the Treaty. She believes China is currently doing all that it can and needs to do to pave the way for signature. He Yun provides her analysis of the reason for China's abstention at the UN General Assembly on 2 April 2013. Whilst some of China's concerns regarding the Treaty are yet to be addressed, recent discussions in China show the future may still be bright.

Click here to read Saferworld's recent analysis **Arms Trade Treaty Approved**.

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CHINA'S ARMS TRADE TREATY ABSTENTION: REASONS FOR HOPE?

BY HE YUN

On 2 April 2013, the UN General Assembly (UNGA) passed the Arms Trade Treaty (ATT) by a majority vote of 155 for and 3 against, with 22 abstentions, after a failure to achieve consensus. China was among the 22 countries that abstained. Explaining why China took this position, China's Deputy Permanent Representative to the UN, Mr Wang Min, said, "We expect all parties to reach consensus on an effective treaty to regulate the conventional arms trade and to combat illicit trafficking of small arms and light weapons", and that "we could support a treaty reached through consensus."¹

The principle of agreement by consensus weighs heavily upon China's decision-making process for two reasons. The first relates to the impact this will have on the effective implementation of the Treaty. As explained by Foreign Ministry Spokesperson Hong Lei, "avoiding consensus may lead to wider differences and even confrontation. Neither is [sic] helpful for the effectiveness and universality of the treaty."² Russia and India – like China, major weapons importers and/or exporters – also abstained in the vote. While India is taking a long hard look at what the Treaty would mean for them if they signed, Russia has shown few signs of signing up to the Treaty in the near term.

The second reason regards the possibility of majority vote, instead of consensus, becoming the new norm of passing agreements in multilateral arms control negotiations. Although consensus does not mean all member states must cast positive votes in order for a treaty to be passed, it does mean that no country should cast a negative vote.³ To pass an agreement regulating the international trade in conventional arms despite the negative votes is not a favourable option for China.

China's fear of majority-voting becoming the norm in international arms control negotiations is further exacerbated by a concern that it is sidelining the Conference on Disarmament, where consensus is

mandatory. As early as 2008, China expressed concern that the ATT was taking a path that might challenge the authority and function of the Conference on Disarmament as the only institutionalised multilateral arms control negotiation forum.⁴

However, there has been a precedent where an arms control treaty was passed by the General Assembly, short of consensus but enjoying China's support. In 1996, when the negotiation of the Comprehensive Nuclear Test Ban Treaty (CTBT) was obstructed by one state – India – but favoured by all other states, Australia took the draft text to the UNGA, where it received a clear majority of votes. China was one of the states which voted for the resolution.

Moreover, it was a 2012 UNGA resolution that "called upon the President of the Final United Nations Conference on the Arms Trade Treaty to report on the outcome of the Conference to the General Assembly", which paved the way for the Conference President to bring the draft text to the UNGA.⁵ It was recognised at the time to be a means of repeating the strategy used at the negotiation of the CTBT. China voted for that resolution.

This suggests that although the lack of consensus may be a factor behind China's decision to abstain from voting for the ATT at the UNGA, there might be other factors as well.

China's attitude towards the ATT remains unclear. Some note that China seemed satisfied with the text of the Treaty and are therefore hopeful that Beijing may be convinced to sign the ATT in the not too distant future. This argument rests on the fact that China did not raise objections to the final draft of the Treaty at the last Diplomatic Conference. However, accepting the draft Treaty does not mean that all of China's concerns regarding the Treaty have been addressed. It is frequently noted in the Chinese media, for example, that the Treaty did not address the issue

of arms transfers to non-state actors, one of China's chief concerns. What's more, some believe there is little urgency for China to join the ATT framework, as China has already developed a very comprehensive national arms export control system.

Some speculate that Washington's signing of the ATT may put pressure on China to act accordingly. This, however, is unlikely. Although there has been some interest among the Chinese press towards Secretary of State John Kerry's signing of the ATT on 25 September, the media also quickly noted that the Treaty was unlikely to be ratified on Capitol Hill, and therefore would not lead to any practical policy changes in the United States.⁶ The press also noted that the US signing the Treaty would not affect the US' overseas arms sales.⁷

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Nevertheless, the future may still be bright. Some Chinese arms control experts attending a conference in Beijing in May this year revealed that China is currently undertaking an internal inter-agency process of analysis of the Treaty text that may determine its future position. Some speculate that there may be reforms in Chinese arms sales regulations following the Third Plenum's decision this November that private capital should be injected into the state's weapons industry. Whether this materialises or not, only time will tell. At the very least, as Ambassador Wu Haitao recently noted at the 68th session of the United Nations General Assembly, "China will remain engaged with all parties on the follow-up work of this Treaty and make joint efforts to build a regulated and reasonable international arms trade order."⁸

BY PROFESSOR OUYANG LIPING

The ATT's goals and objectives are widely welcomed by the international community, but its adoption has been less straight forward, indicating difficulties in the Treaty's negotiation process.

In principle the Chinese Government is supportive of the Treaty. However, before signing and ratifying the Treaty, time is needed to study, scrutinise, and digest it.

There are several reasons to remain optimistic with regards to China's potential signature and ratification of the ATT: firstly,



Secondly, China's experience in meeting international norms vis-à-vis curbing the proliferation of weapons of mass destruction illustrates that the government has the capacity to do likewise with regards to conventional arms. China demonstrates its experience and capabilities through its efforts in combating the proliferation in weapons of mass destruction. The Chinese Government has signed a number of non-proliferation treaties and developed the internal mechanisms to carry out commitments under these treaties. In many areas, China's national policies meet or surpass international standards. For instance, in the nuclear field, China has developed a control list that covers all materials and technologies included in the control lists of the Zangger Committee, the Nuclear Suppliers' Group; in the biological and chemical fields, the scope of China's control lists are the same as those of the Chemical Weapons Convention and the

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PUTTING THE ARMS TRADE TREATY INTO PRACTICE *continued*

Thirdly, as previously mentioned, some provisions of the ATT have already been put into practice in China. The smuggling and trafficking of guns is regarded as a violation of Chinese law. Such policies and laws have very strong domestic support.

Given the above, why then does China remain cautious about the Treaty? Firstly, to sign the ATT is easy, but to implement it requires a great deal of systematic work, something the government is likely to want to be prepared for if and when it does sign the Treaty. The provisions of the ATT are relevant to many governmental departments within China, as well as military agencies and Chinese enterprises. Within China, many workshops and conferences have been held focusing on the ATT, which indicates the relative importance attached to the Treaty inside China.

Whilst many within China are in favour of the ATT, there are also dissenting voices. Those individuals or institutions voicing objection are not commonly in opposition to the spirit or objectives of the Treaty, but instead are worried or unclear as to the exact implications of the ATT. For instance, some voicing disagreement lack clarity on the concrete content of the ATT and would first like direction from the Chinese Government as to whether it is an arms control treaty, a trade treaty, or a mixture of both. Others call for clearer guidance from the government on how the ATT will affect their future practices, whilst some also worry about the financial implications of the Treaty. Various scholars meanwhile have voiced disagreement regarding the definitions, concepts, scope, and parameters of the Treaty.

Within the Chinese Government, there are concerns over next steps after signing. The government will need to educate and train governmental personnel and companies on the provisions of the ATT, as well as modifying laws, formulating and disseminating knowledge of policies and regulations, and coordinating cross-departmental cooperation.

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The government will be well-advised to learn from the efforts of the international community – from those governments with large shares in the international arms sales market – in areas such as advanced management and measures on the conventional arms trade, especially with regards to post-export monitoring of end-users and end-use certificates. The Chinese Government should also make efforts to cooperate with the international community on information sharing and joint risk assessments.

What then will China do next? Whilst the government has not yet signed the Treaty, this does not mean that nothing is being done from within China towards signature and ratification. Whilst there

is not much being said from within China on the subject of the ATT, its significance is well understood and many recognise what a privilege it would be for China to become one of the first States Parties of the Treaty, when it comes into force possibly sometime next year. China is currently doing all that it can and needs to do to pave the way for signature. For China, signature means commitment. Once China commits, it must be certain that it is well prepared to implement the treaty.

NOTES

- 1 "Arms Trade Treaty should be reached through consensus: China" *Xinhua News*, 2013-4-3, available at http://news.xinhuanet.com/english/video/2013-04/03/c_132281188.htm
- 2 "Foreign Ministry Spokesperson Hong Lei's Regular Press Conference on April 3, 2013", available at www.fmprc.gov.cn/eng/xwfw/s2510/2511/t1028801.shtml
- 3 Aust A (2007), *Modern Treaty Law Practice* (Cambridge: Cambridge University Press) p. 86
- 4 www.fmprc.gov.cn/mfa_chn/wjbxw_602253/t521632.shtml
- 5 Resolution adopted by the General Assembly, 24-12-2013, accessed at www.europarl.europa.eu/meetdocs/2009_2014/documents/sede/dv/sede012313ungares67/_sede012313ungares67_en.pdf
- 6 There are opinion articles titled "US Signing ATT: Signing an empty check?" available at <http://news.sina.com.cn/w/2013-09-27/061028312678.shtml>
- 7 "US claims that participating in the Arms Trade Treaty will not effect is overseas arms sales", China News Online 2013-11-08, available at www.chinanews.com/gj/2013/11-08/5477929.shtml
- 8 Statement by H.E. Ambassador Wu Haitao, Head of the Chinese Delegation at the General Debate of the First Committee of the 68th Session of the United Nations General Assembly, 2013-10-08, available at www.china-un.org/eng/hyfy/t1086012.htm

ABOUT THE ATT UPDATE

The *ATT update*, co-published biannually by Saferworld and the School of Political Science at Tongji University, is a platform for Chinese experts, academics and students to exchange their views on United Nations (UN) Arms Trade Treaty (ATT) initiative, and to track international efforts to regulate the global transfer of conventional arms under the ATT process. We welcome all comments and ideas for submission.



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